

## RULE 515

### Finding and Decision

- (a) No variance shall be granted unless the Hearing Board makes all the following findings:
  - (1) That the petitioner is or will be in violation of any rule, regulation or order of the Antelope Valley Air Pollution Control District Hearing Board or applicable section of the California State Health & Safety Code (H&S Code).
  - (2) That due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either:
    - (A) An arbitrary or unreasonable taking of property, or
    - (B) The practical closing and elimination of a lawful business.
  - (3) That such closing or taking would be without a corresponding benefit in reducing air contaminants.
  - (4) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.
  - (5) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.
  - (6) During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the District, and report these emission levels to the District pursuant to a schedule established by the District.
  
- (b) (1) In determining whether or not the petitioner has presented evidence sufficient to make the finding specified in H&S Code §42352(b) and Rule 515 (a)(2), the Hearing Board shall consider, in addition to any other relevant factors, both of the following:
  - (A) In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the Hearing Board shall consider whether or not the petitioner took actions to comply or seek a variance which were timely and reasonable under the circumstances. In so doing, the Hearing Board shall consider actions taken by the petitioner since the adoption of the rule from which the variance is sought.
  - (B) In determining whether or not requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business, the Hearing Board shall consider whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.

- (2) If the petitioner is a small business as defined in paragraph (3), the Hearing Board shall consider the factors specified in paragraph (b)(1) as follows:
- (A) (i) In determining whether or not the petitioner took timely actions to comply or seek a variance, the Hearing Board shall make specific inquiry into, the reasons for any inaction, including the bases for any claimed ignorance of the requirements from which a variance is sought; and,
- (ii) In determining whether or not the petitioner took reasonable actions to comply, the Hearing Board shall make specific inquiry into the petitioner's financial and other capabilities to comply.
- (B) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the Hearing Board shall make specific inquiry into the impact to the petitioner's business and the benefit to the environment which would result if the petitioner was required to immediately comply.
- (3) For purposes of this subdivision, the term "small business" shall have the same meaning as set forth in Rule 102, except that no source which emits four tons or more per year of any non/attainment air contaminant or its precursor shall be a small business.

(c) The decision shall be reduced to writing, served and filed within thirty (30) days after submission of the cause by the parties thereto, and shall contain a brief statement of facts found to be true, the determination of the issues presented, findings, and the order of the Hearing Board. A copy shall be mailed or delivered to the APCO, the petitioner, and to every person who has filed pleadings or who has appeared as a party in person or by counsel at the hearing. A copy of any decision granting, modifying, or otherwise affecting a variance shall be mailed to the State Air Resources Board within 30 days after the effective date of the decision.

(d) Formal written Findings and Decision of the Hearing Board shall be prepared by the Hearing Board unless otherwise directed by order of the Hearing Board.

(e) Whenever parties are directed to prepare the Findings and Decision of the Hearing Board, the Findings and Decision shall be submitted to the Hearing Board within fifteen (15) days after the date of the hearing. The Chairman of the Hearing Board may, upon a request by the preparer of the Findings and Decision, grant an extension of time not to exceed ten (10) days. Prior to submittal, the Findings and Decision shall be approved by the opposing party. When parties cannot agree to the form of the Findings and Decision, a hearing may be requested to determine the form of the Findings and Decision. The Clerk of the Hearing Board shall notify both parties by telephone of the date, time and location of the hearing.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]